Exhibit A

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In Re: CATHODE RAY TUBE (CRT) Antitrust Litigation CRAGO, INC., et al., Plaintiffs, vs. CHUNGHWA PICTURE TUBES, LTD., Defendants.	No. 07-5944 SC MDL No. 1917 JAMS Reference No. 1100054618

PROCEEDINGS

AUGUST 24, 2010

JAMS

Two Embarcadero Center

Suite 1500

San Francisco, California

Before the Honorable Charles A. Legge (Ret.)

Reported by: Karen Friedman, CSR 5425

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P R O C E E D I N G S

August 24, 2010 9:04 a.m.

JUDGE LEGGE: Let's get started, out of courtesy to those of you who are here on time. I have sent sign-up sheets down each side of the tables here. There are four of them in circulation, and please, before you leave, make sure you're signed in on one of those sign-up sheets, and put them back here on the table for my benefit and the benefit of the court reporter.

As you see, we do have a court reporter today. She will have the benefit of your identities on the sign-up sheets. It will be a help to her if, when you speak, you do state your name first, so she can take down an accurate transcript of who has been saying what.

And by way of facilities, most of you who are here were here last time, but for those of you who were not here last time, as most of you know, we have a coffee station, tea, soft drinks, nibbles. Upstairs, near the elevator, we have a bigger refreshment center. You can go up there and help yourself, also.

The restrooms are out the door and out to the right. You do need a code. The code is 94111. You won't have any trouble remembering that because as you

go out the reception door, the number is plastered on the inside of the door. Let's proceed.

Now, on today's agenda I think we have two broad categories, things to talk about. One is the motion made by the defendants with respect to the most recent amended indirect complaint, and the other is various matters dealing with, primarily, discovery matters. And so I think we'll proceed with each of those two things, in that order.

Now, during the discussion of the motion with respect to the indirect complaint, I'm probably not going to offer very much there for you because it breaks down, so much of it, into a question of each individual state, and that's a little hard to deal with in an oral setting.

So I would suggest that you use as your guide to tell me anything new, anything in addition, or any particular point of emphasis you want me to focus on in connection with that motion.

As you can see, we just have a roster and a podium here. If you want to speak using it, you can either come up here and speak, so your colleagues can hear you, or if you want to take it to your desk, you can do that.

So in connection with these two broad

categories we're going to be talking about today, the motion to dismiss and then the various discoveries, I'm trying to signal to you ahead of time, I'm not going to have much to say on the first of that because it's so individual to each of the states. I guess there is one overarching issue, and that is relation back. But other than that, it's state by state. The answer is not very easy to handle in oral argument. So just tell me what more you think I need to know in light of your positions.

MR. ALIOTO: Mario Alioto.

I want to make sure, your Honor, what order you would like to hear these matters. The motion to dismiss, as your Honor knows, has to do with the indirect purchaser complaint. The other issue has to do with everyone. I talked to Mr. Saveri last night, and we discussed the possibility of proceeding with the discovery matters first since they involve everyone, and then taking the motion second since my friends on the direct purchaser side have no interest in that.

So it might be better to proceed that way. But if your Honor chooses --

JUDGE LEGGE: Well, if you don't mind, I prefer to do it the other way. Because as I'm saying in connection with the motion to dismiss, I'm not going to

have much to contribute. I'm going to take down whatever you want me to hear, to take down, but when we get into discovery I'm going to have more feedback, and it's going to be a very freewheeling discussion amongst all of us. So I would rather get the motion to dismiss done and then deal with the things we need to talk about. I don't think it will take too long in connection with the motion.

Now, by way of other facilities, we are WiFi'd on this floor, so your computers should work wherever you want them to work. If you do need some office machinery we don't have right here, let me know and you will be directed upstairs to our office center, and the people up there will connect you up and give you access to their facilities there.

We have one more room for the plaintiff's side and one more room for the defense side, down the hall; there's enough for you to have a caucus if you need to caucus outside of the conference room here.

It's a warm day today; the room in here will probably get warmer, so be as comfortable as you can politely be. Feel free to bring refreshments in here.

With that introduction, and in spite of Mr. Alioto's suggestion, I would like to proceed with the defense joint motion to dismiss the indirect

purchaser complaint. Are you rising to speak to that?

MR. BALLARD: I am Dylan Ballard. I'm counsel for Samsung defendants. I am here to be speaking on the motion on behalf of the defendants today. Eric Shapland is going to be arguing on the relation back and the statute of limitation issues.

JUDGE LEGGE: I'm pausing a little bit on the mention of statute of limitations because it seems to me it gets so much into the second phase of this, which is the discovery.

MR. BALLARD: I only meant insofar as the first.

JUDGE LEGGE: As I said, I'm not going to interfere or interpose myself at all. I have read your motion, I have read the plaintiffs' opposition, and I have read the defendants' reply. So I know essentially what the issues are. You just add what you think I need to know in order to rule on the motion. Thank you.

MR. BALLARD: Okay. With that guidance in mind, and as your Honor said, a lot of these arguments come down to really parsing some fairly intricate state law issues. My plan is not to rehash the briefs but to just briefly go through what I think are the key high-level points that will take some benefit from some oral argument.

We have moved to dismiss plaintiffs' claims under Illinois, Maine, and Montana laws for lack of standing, and it's undisputed, or at least I don't understand plaintiffs to be disputing, that the existing named plaintiffs in this complaint do not today have standing to maintain these claims, because none of these plaintiffs allege that they reside in any of these three states. None of them allege that they purchased any products in these three states.

Instead, what plaintiffs are asking, your Honor, to do is to defer dismissing these claims for lack of standing until the lack-of-certification stage. Even though it's obvious that no one has standing to maintain them. That's not how standing works. Standing is a threshold requirement; it goes to the power of the court to address the merits, in the first place, and it isn't something that can just be deferred for another day. And we've decided in a number of cases to say that's the rule, in the Ninth Circuit, and it's the cases applying that principle to dismiss putative state claims well before certification for lack of standing.

And the only exception to this rule that standing has to be addressed immediately occurs in this narrow context; we're talking about a proposed global class settlement and a class cert who obviates prior

deficiency in standing.

Obviously that's not what we're talking about here, and given the way these classes are defined, we're talking about individual stated classes. There's not even a theoretical possibility that a Wiggins class cert could, just as plaintiffs lack individual standing, they're never going to have standing to maintain them as a class. Because to represent a class, you have to be a member of that class. That's a fundamental principle of class action procedure. And on the face of this complaint, none of the existing named plaintiffs could ever be members of a class. In Illinois the classes are -- none of these named plaintiffs purchase products in these states. So the same deficiency they're facing today they will be facing then. So waiting for class cert is going to be pointless in this case. And the case law recognizes that that is the rule. That you don't need to wait when the same deficiency applies then as it would apply now. It wouldn't just be pointless to wait, it would be prejudicial to the defendants. If they're going to try to add people to this complaint, they should be required to do that now and give us a chance to seek discovery from these people and to litigate this case accordingly.

We've also moved to dismiss plaintiffs' unjust

enrichment claims in 14 states. I'm not going to try to get into the law in each of those states but just, in our first motion to dismiss we argued that plaintiffs cannot seek recovery under unjust enrichment theory in states where the underlying statute either completely bars plaintiff from bringing suit or where the statute precludes plaintiffs from recovering the type of restitutionary relief that they're seeking under this unjust enrichment theory. And the principle underlying both of those is that you can't just recast what is at bottom an antitrust claim as an unjust enrichment claim to avoid statutory legislature-enacted limitations on recovery. And in your Honor's recommendations on the first motion, it was our reading that your Honor agreed with those arguments, at least as a general proposition, but wanted to see a state-by-state breakdown on the law on that to ensure that these principles really are adhered to in the state. So you tentatively ruled that that motion to dismiss be denied without prejudice, and Judge Conti adopted that ruling. So this go-around, we took that observation to heart, without the need for a state-by-state breakdown. That's exactly what we provided on pages 9 to 15 of our opening brief. We ultimately asked for additional pages on the reply brief to make sure that we had fully responded to plaintiffs

in each state.

Like I said, I'm not going to try to get into the law of each state; that's fully set out in the briefing. But just to show how these two arguments break down, in 3 of these 14 states -- we're talking about Arkansas, Massachusetts and Montana -- the underlying statute completely precludes plaintiffs from suing. In the case of Arkansas it's because the statute they're suing under does not cover price fixing. In the other two states it's because those states simply adhere to Illinois break, they don't have standing to sue. You can't use unjust enrichment as an end run to recover.

On the other 11 states, we've cited to case law for each state. First of all, we've cited the statute showing it does not apply to restitution, and then we've cited to state law, stating that it adheres to this canon, that where the legislature enacts a statute and it enumerates the available remedies, those remedies are presumed exclusive. In other words, where the legislature leaves something out, it assumes it's done that intentionally. The legislatures in each of those states have done it to preclude the types of common-law remedies we're talking about.

Inversely, plaintiffs have not cited to one case, not a single case to any of these 14 states,

allowing a plaintiff to bring an unjust enrichment claim based on what, at bottom, are price-fixing claims. They don't have one case like that.

And I'll just note briefly, regarding our motion to dismiss plaintiffs' claim under Massachusetts consumer protection statute, this is the second time plaintiffs have failed to comply with this requirement under Massachusetts law that they serve us with a demand letter 30 days prior to bringing their claim, and they try to paint this as some dry technical requirement. But the bottom line is, that as your Honor recognized when you recommended the dismissal of the claim the first time, the Massachusetts courts have made it absolutely clear this is an absolute prerequisite suit. There are no exceptions. Moreover, the rule in both federal court and in Massachusetts is that you only get two bites at the apple. So they have had two chances to get this right. They don't have any excuse for not getting it right, and they shouldn't get a third time. This is a claim that should be dismissed a second time, and this time the dismissal should be with prejudice.

And I think those are the key high-level points, keeping your Honor's guidance at the outset in mind. I may have a few more comments, hearing what plaintiff has to say.

JUDGE LEGGE: If somebody wants to speak on relation back and statute of limitations.

MR. SHAPLAND: Good morning, your Honor. Eric Shapland on behalf of the LGE defendants. I'm going to cover relation back. The first point is about focus. The new pleading contains five classes of state indirect purchasers that were not contained in the first consolidated amended complaint. Those states are Montana, Illinois, Maine, Arkansas, and D.C. The new pleading therefore adds five state classes to this action and expands in technical terms --

JUDGE LEGGE: D.C. has its own District of Columbia statutes on the subject; not just the federal.

MR. SHAPLAND: I don't understand the question, your Honor.

JUDGE LEGGE: The District of Columbia. It's not a state. Is the legislature governing that, other than Congress passed legislation?

MR. SHAPLAND: Correct. The D.C. indirect purchasers are bringing claims under the laws of the District of Columbia. So by adding these five new classes, what the indirect purchasers have done is they've added to the number and generic identities of the indirect purchasers who are seeking recovery of alleged overcharges in these proceedings. Plaintiffs

can't use relation back to avoid the limits on such an expansion of the number of plaintiffs in this case that are imposed by the applicable statutes of limitations. The standard for relation back varies depending on whether or not the new pleading is adding merely new claims or also new parties. When the new pleading is adding new claims, a very liberal, same transaction or occurrence applies. But when the plaintiffs are adding new parties to the action, a more stringent rule applies and significantly limits the application of the relation-back doctrine. That's because the relation-back doctrine is not an open invitation for plaintiffs to join an earlier filed suit.

My second point is that plaintiffs in part apply the wrong standard. Because five new classes have been added to this action the defendants apply the standard that applies to new parties.

Plaintiffs take a different approach. They apply the liberal standard as to two other standards, the Montana and the Illinois classes. Not because the Montana and Illinois classes have been part of this proceeding; they haven't. They do it because they haven't even added the plaintiffs who would represent the classes to this action.

In our reply we detail exactly why plaintiffs'

argument would completely eviscerate the statute of limitations and create a new relation back to be an end run around the statute of limitations. And I don't think you'll hear today an argument that the liberal standard to relation back applies to any of the classes.

My third and final point is that to the extent that plaintiffs apply the appropriate standard, the stringent standard, they misinterpret it. The stringent standard requires that plaintiffs prove notice, a lack of prejudice, and an identity of interest. But what do these three vague elements mean? They come up all the time in the law in a variety of different contexts, and in each context they have a slightly different meaning based on the policies that are at issue.

What plaintiffs do here is they take meanings of these different elements of these different contexts in the law. And what we need to do is we make sure we apply these elements with the actual policy that's at issue here. And that's the repose reflected in the statute of limitations.

For example, the notice required here is not like the notice required under Rule 8's requirement for a sufficient pleading. Under Rule 8, what a pleading is supposed to do is supposed to give the defendant notice of the subject matter of the cause of action. And

that's sufficient because what the purpose is, is that the defendant should be able to prepare its defense. Here it's not just the subject matter, but it's also the size of the litigation that the defendants must be put on notice of.

They must be put on notice of the number and the generic identities of the plaintiffs who are pressing claims in this action. And that's because when the statute of limitations passes, the defendants should be able to enjoy the repose that comes from knowing that the size and the generic identities of the plaintiffs will not be expanded.

And under that standard it's important to recognize that claims by one class are not notice that there are going to be coming claims from other classes, even if both classes allege claims that arise out of the same transaction or occurrence. Therefore, in this case, suits by California residents, under California law, seeking to assert California classes of indirect purchasers don't provide notice to the defendants of coming claims by the D.C., Arkansas, Montana, and Illinois classes, and the plaintiffs who sat on their rights should have their claims barred.

The two final elements. One is prejudice. The plaintiffs deny that an expansion of liability that

results from the addition of these five new classes is prejudicial to the defendants. To do so, plaintiffs rely on a concept of prejudice that we all know from evidence law. We're all taught in law school that evidence isn't prejudicial merely because it's bad for the defendants' case or it somehow expands the scope of liability. But here the policies are different. Evidence is concerned about impermissible inferences. Here, relation back focuses on protecting the repose that follows from the statute of limitations.

With that goal in mind, relation back is certainly prejudicial when it expands the liability by permitting new state classes to join the litigation, and to that effect, in Leachman v. Aircraft, a new state that states its claims did not relate back; even if there is no showing of specific evidence, defendants would still be deprived of their interest in repose at that expansion of liability equated to prejudice.

A similar holding was held by the First Circuit in Young v. Lepone where it called the prejudice manifest, resulting in an expansion of liability.

The last point has to do with identity of interest, and there the plaintiffs argued that the new class claims are based on the very same alleged misconduct as the claims of the original class members.

That argument equates the identity of interest requirement with the same transaction in current requirement that applies to relation back for new claims. Clearly, more is required.

Again in Young v. Lepone, the First Circuit required a fairly advanced degree of notice, and it went on to reason what I thought is worth discussing here.

"We repudiate that an action filed by one plaintiff gives notice of an appending rejoinder of any and all" --

Such a law would make a mockery of the premise of repose. We, like other courts, flatly reject the proposition is available merely because a new plaintiffs' claims arise from the same transaction or occurrence as the original plaintiffs' claims.

Plaintiffs do not even attempt to satisfy this higher standard for identity of interest, and to do so they would have to show, for example, that the new class of Montana purchasers was going to be represented by a plaintiff who, when ultimately joining this action, would be joining an existing class of Montana indirect purchasers.

And with that, I would cede the podium to the plaintiffs and save any remarks for rebuttal.

JUDGE LEGGE: Do you want to come to the

podium?

MS. RUSSELL: Lauren Russell with Trump, Alioto, Trump & Prescott on behalf of the indirect purchaser plaintiffs.

Before we begin, your Honor, I'm going to hand you a chart that I've prepared. I've already given copies to defense counsel, and it's a list of the cases cited and the parties, its briefs, and it's just a list of the defendants' cases and our case. And they are the only cases that are actually on point in the briefs.

The plaintiffs have cited to cases that deal with the exact factual situation herein.

The cases in the chart deal with the exact factual situation before the court, and that is, that you have named plaintiffs who have themselves Article III standing. And Article II standing in a constitutional sense means that they have suffered an injury in fact. And in this case they have suffered an injury because they paid more for CRT televisions and monitors. This injury is fairly traceable to the defendants' unlawful price-fixing conspiracy, which caused the prices for CRTs and monitors to be higher than it would be in a competitive market. Thus, from a constitutional standpoint, there's no concern over this court's power to hear this case.

There is a justiciable case, or controversy, before the court. Unlike the cases that the defendants have cited to you, in those cases you have plaintiffs who have not suffered the injury that they were trying to represent.

Here you don't have a situation where the named plaintiffs are trying to piggyback on the injuries of unnamed class members. The defendants' argument that the named plaintiffs lacked standing would simply not arise if it were not for the fact that the named plaintiffs are attempting to assert class claims on behalf of similarly situated purchasers in other states under analogous state laws. Therefore, the issues the plaintiffs raise is whether the named defendants have standing to represent a proposed class and whether the named plaintiffs should depend on Rule 23 criteria, and this is simply not right for determination. The basis for this law that I have just stated to you is the Supreme Court's opinion in Ortiz v. Fibreboard. In Ortiz, the Supreme Court noted that "When questions of both Article II jurisdiction and class certification are presented, the class certification questions at times should be treated" -- I'm quoting -- "should be treated first because the class certification issues are logically antecedent to Article III concerns and pertain

to statutory standing, which may be treated before Article 3 standing."

This is a case like Ortiz, where the defendants are challenging plaintiffs' statutory standing, not Article III, to bring claims under Illinois, Montana, and Maine.

They have all suffered the same injury. They all have present common issues, and this should be analyzed under Rule 23. This is not a case of threshold individual standing. Now, admittedly, this is an exception to the normal rule that standing should be addressed first, and it's an exception that has developed because of the unique posture of a class action.

Newberg on Class Actions has discussed this, and significantly, this seminal treatise on class action supports the plaintiffs' position in this case.

And I would like to quote for you from Newberg, section 2.1, 4th edition.

And this also is referred to in our briefs. I'm quoting. "Anyone with individual standing who satisfies Rule 23 criteria may bring a class action. Like many legal principles relatively easy to stick and commonly accepted, the application of this rule in specific cases has been far from uniform. The lack of

consistency is understandable, given the fact that overlapping concepts have undergone almost revolutionary change in the last several years and are infused with substantial elements of judicial discretion. Functional tasks have replaced any requirement for the existence of a class and membership in the class rather than some existential class with a determinate relationship. The only common bond commanded is a common legal controversy measured by the common question of fact or law.

We have that here. We have named plaintiffs who have exactly the same injury; they purchased the same products, and they're moving to certify a class with analogous state laws, where the substantive elements of these laws are the same. And the defendants completely ignore the fact that the vast majority of cases that have addressed the specific factual situation, as I demonstrated in the chart, I believe. The defendants have cited you only 5 cases that address the specific situation, and we have cited 14. And obviously the majority of these cases have come to command, since the passage of CAFA in 2005.

So all of these other cases that defendants cite, where they pooh statements about standing, and you must be a member of the class, and it's a threshold issue, none of these cases have anything to do with what

is going on in this case. And I urge your Honor to read the cases that are in the chart that I have given to you there.

One other point I might add. The defendants rely very heavily on the Ninth Circuit's opinion in Easter v. American -- excuse me. Easter v. American West Financial. The cite is 381 Fed.3d 948. And that was a Ninth Circuit case from 2004.

And I heard defense counsel in his oral argument claim that Ortiz and the logical antecedent exception only applies in the concept of a mandatory global settlement. That is simply not true. And defendants rely on Easter for that.

Easter is utterly factual and distinctive in this case. There the named plaintiffs had not purchased a loan from certain of the defendants that they were seeking to bring into the case. There was no conspiracy alleged, and therefore these defendants were not linked in any way. And so the plaintiffs, in order to show threshold Article III standing, they had to show an injury that was directly traceable to those defendants. And they were completely unable to do that, and that's why it was appropriate in Easter to address standing first.

There is a case from the Western District of

Washington that has completely rejected the defendants' reading of Easter. And incidentally, the case is Jepson v. Ticor; the cite is 2007 Westlaw 2060856, and that's the Western District of Washington, May 1st, 2007.

In Jepson, plaintiffs had alleged various causes of action stemming from an alleged and implied contract between himself and defendant.

In addition, the plaintiffs sought to represent a class of individuals who have suffered similar injuries under the laws of the State of Washington, Idaho, Washington, New Mexico, and Arizona.

Like here, the plaintiffs stated the defendants lacked standing. Under Ortiz, the class certification was logically antecedent, and in addition the Jepson court expressly rejected the defendants' standing that Easter lacked a mandatory global setting of class.

Defendants' conclusory assertion that Easter limited Ortiz to only those circumstances involving a mandatory settlement class is unpersuasive. Ortiz stated that when the class certification is logically antecedent, the global settlement class in that case is but one instance of such a certification. Defendants provide no reason why it would be to only one.

The three cases that defendants cite from the Northern District of California all follow Easter,

erroneously, in our opinion. They fought the argument that Easter limited the application of Ortiz and ignored the fact that the vast majority of cases all over the United States have not found that.

One final point. Defendants have made an argument for the first time, in their reply, that because we are not members, or named plaintiffs are not members of an Illinois, Montana, or the named class, that they will never have standing and that there's no point in deferring this to class certification.

That demonstrates our point. This entire argument is premature. We have not moved for class certification yet. We will define our class when the time comes, and when the time comes we may decide to group together different state laws by their similarities, and we may choose to have one class representative for different state laws. And there is plenty of precedent for doing that. A class definition evolves throughout the case, and to make a judgment now as to whether a particular plaintiff is a member of a class is premature.

Thank you, Your Honor. Unless you have any questions, that's all I have.

JUDGE LEGGE: Anything further?

MR. LAMBRINOS: Demetrius Lambrinos. I

represent the indirect plaintiffs. I'm going to address the same high points in the unjust enrichment claims. Your Honor, before I start, I'm going to highlight a couple of cases; here's four cases: one federal case and three state cases.

On the unjust enrichment claim, your Honor, the defendants argue that we cannot recast our claims to overcome a complete statutory bar on indirect purchaser claims.

Your Honor, this argument is based on a false premise. There's no complete statutory bar on indirect purchaser claims in any of these states. The defendants don't cite a single case that says that the unavailability of recovery acts as a complete statutory bar. Even if you look at the individual cases, the cases we just handed you. For example, we look at Arkansas; they say that price fixing is not allowed. But if you look at the New Motor Vehicles case, it discusses price fixing under the Deceptive Trade Practices Act. It distinguishes the defendants' authority and it says their authority, is based, in particular it relies on a contract-based definition; only applies in contract cases. And when you look at the Arkansas State Supreme Court in the second case I handed you, which is the Baptist Health case, the

Baptist Health case uses the same definition of "unconscionable" used in New Motor Vehicles. It affronts the sense of justice, decency, and reasonableness. This case doesn't speak about bargaining power, which the defendants' entire brief is based on.

They also state it applies mainly to contract cases, but they don't cite any cases to deal with that.

Under Arkansas' consumer protection law, indirect purchaser actions are also allowed. That's also discussed in the New Motor Vehicles case.

As to Montana, the defendants argue that because Montana's antitrust statute adheres to Illinois brick, that there's no viable claim. But, your Honor, if we look at the Olson case, this is from the superior court in Montana, they argued that the statutory construction of Montana's act should not be interpreted as a bar on indirect purchasers. This is the only Montana case cited by either side, and just because there's a statutory bar in one state statute, that's not a complete statutory bar in all indirect purchaser actions.

This is the same from Massachusetts. If we look at Ciardi v. Hoffman LaRoche, the Supreme Court held that indirect purchaser actions are permitted under

Massachusetts Consumer Protection Act. The defendants' argument is based on a false premise, and the unjust enrichment claims don't unduly circumvent state statutes.

If we look at the second issue: whether or not there's a new, right, exclusive remedy for all of the state statutes, prescribed to purportedly support unjust enrichment claims.

The first thing I would like to quote from is your holding on the defendants' first motion to dismiss, where you stated that "The defendants have not carried their burden to establish the intent of the legislature in enacting a specific statute or a decision of a particular state court precludes relief for restitution or unjust enrichment. It is the defendants' burden to show that any particular state statute voices an express intent to obviate the common law." They haven't carried their argument. The entire intent was that the plaintiffs didn't intend to exclude the common law. That's not our burden. It's theirs.

The second is, the defense counsel states there is not a single state where there is unjust enrichment.

There are several cases cited in the defendants' brief where unjust enrichment and antitrust are in the same case. For example, in Cox v. Microsoft,

unjust enrichment and antitrust simultaneously.

And the last point I want to make here is if you went and looked at each of the state statutes that they cite in their briefs which speak of the damage provisions, none of these statutes on their face purport to supersede the common law.

We have a huge footnote listing the laws of the jurisdictions of every single state at issue in this case, and each one of those cases, when you say that a state statute obviates the common law, there has to be express intent voiced in the statute, not the contrary. If they can't prove that as to each particular common law, and none of the state statutes purport to obviate the common law.

Those are those arguments, your Honor. I will cede the floor to Sylvie.

MS. KERN: Good morning, your Honor. Sylvie Kern for the indirect purchaser plaintiffs. I'm going to address the relation-back argument, and before I begin, I just want to hand your Honor a copy of the Figone complaint, which I will be addressing, with some highlighted sections.

I'm not going to re-argue what is in our briefs. I simply want to make three new points. First, I want to clarify what's at issue here. Defendants have

tagged onto their motion to dismiss a request for an order that the claims do not relate back. Well, the claims are timely on their face with one exception, and one exception only, which is the Montana antitrust claim, which is subject to a two-year limitations period.

So the sole issue here is whether the claims relate back to the Figone complaint both with respect to the Montana claim and with respect to fraudulent dealing..

So that brings me to my second point, which is that the claims of existing plaintiffs which were brought under Illinois, Maine, and Montana laws relate back. For purposes of these claims, because there are no new plaintiffs, the test for relation back is very straightforward. It's a test under Rule 15(c)(1)B, and the test is whether the claims arise out of the same conduct, transaction, or occurrence, as the previous claims, and the claims do relate back. They rely on the same factual allegations. And I will simply refer the court to our brief, pages 21 to 22.

I want to respond to defendants' arguments on standing. Either plaintiffs have standing or they don't. We've already heard argument on this issue. We believe that they do have standing. If they have

standing, then whether the issue is whether there's relation back, and that test depends solely on the rule 15(c)1B test. The relation back analysis is separate from the standing analysis.

Defendants cite the Syntex case in their brief. They claim that if our analysis were correct, that existing plaintiffs could assert these claims, then the plaintiffs in Syntex would have done the same thing. They wouldn't have resorted to bringing in new plaintiffs. But our case is not the Syntex case.

In Syntex, new plaintiffs had an entirely different cause of action from the original plaintiffs. They purchased stock at different times and they relied on different disclosures by the defendants. There were different injuries in different class periods. That is not the case here. Also, Syntex was a securities case, and the reliance and intent issues that occurred there and differentiated the Syntex plaintiffs are not relevant here.

Finally, with respect to the claims of the newly named plaintiffs who are asserting claims under Arkansas and D.C. laws, the test here is whether, when they are new plaintiffs, is whether there is notice, lack of prejudice, and identity of interest. We have already addressed those issues in our briefs, so I won't

belabor them. But I will highlight the fundamental point that defendants failed to address, that I believe is fatal to their argument. And that is that here the newly named plaintiffs were already asserted class members in Figone, and even in other complaints we discussed, that are also at page 23, note 33, of our brief. And in the complaint that I handed to your Honor, you will note that Figone expressly alleges a District of Columbia antitrust claim, an Arkansas and District of Columbia consumer protection claim, and also a nationwide unjust enrichment claim.

Now, this is dispositive for two reasons. One, this distinguishes all of the defendants' cases, including the new cases that are cited in their reply brief. We've already addressed some of them in our brief; the Basig case, B-a-s-i-g. But defendants also cite to Perry. In Perry, the new plaintiff added allegations that weren't there before. There were no previously asserted class members here; and that's at 81 FRD 490 at 494. The same thing in the Arneil, A-r-n-e-i-l, case. The new plaintiffs were not part of the original class; 550 Fed.2d 774 at 782.

And finally, in Leachman, which counsel referred to today, the amended complaint brought in an entire new party; that's at 694 Fed.2d 1301 at 1310.

That case involved a plane crash. The first complaint was brought by the widow of the pilot, and the later complaint was brought by a corporate plaintiff, the owner of the plane. The corporate plaintiff had a different cause of action.

So in all of these cases the new plaintiffs were not previously asserted class members.

JUDGE LEGGE: You have given me the Figone complaint, but is there a citation in your brief to what Judge Chesney said about it with respect to this relation back issue? Is there a case interpreting this complaint?

MS. KERN: That's the complaint in our case.

JUDGE LEGGE: I'm sorry. This is the present complaint?

MS. KERN: Yes. This why this is so important.

JUDGE LEGGE: I'm sorry, but I have nothing to identify it with the cathode ray tube litigation. I thought you were arranging this for its authority here in the Northern District, because there is nothing here that identifies it as being part of our case.

MS. KERN: Yes, I'm looking for that right now, your Honor.

JUDGE LEGGE: I see in the nature of the case, it's talking about cathode ray tubes.

MS. KERN: I know the reference is in our brief.

JUDGE LEGGE: Now that I have that guidance, this is in this case?

MS. KERN: Yes.

JUDGE LEGGE: I couldn't tell that from the caption.

MS. KERN: Yes, if your Honor can look at page 21, footnote 8.

JUDGE LEGGE: Page 21 of what?

MS. KERN: Page 21 of our brief of footnote 29. The very last sentence states that "Figone was related to the lead case by order of this court," dated January 4, 2008. And it shows docket number 24.

JUDGE LEGGE: Okay. Thank you.

MS. KERN: So I was stating that the first reason that, the fact that these plaintiffs had already been asserted class members was important. There's a second reason, which is that under Syntex, the case that defendants rely on, the equitable tolling doctrine applies. And I'll just refer the court to Syntex at 95 Fed.3d, 95 to 96. Syntex also cites, relies upon another case, the Sawtelle v. Dupont, 22 Fed.2d, and basically what these two cases say is that the equitable tolling doctrine tolls the statute of limitations for

all class members, and even allegations of a nationwide class are sufficient to toll the statute of limitations.

I want to address a few final points made by defendants. Defense counsel was discussing the policies I believe I discussed; the case law, and with respect to prejudice, we have already discussed that in our briefs. I will look for the court to grace your point.

And defense counsel also mentioned the Young case. We addressed that in our brief, as well. I apologize, we've provided the wrong case cite. It's, the Young case is 305 Fed.3d 1, and I wanted to direct the court to page 16, which is the page that defendant quoted from.

And there's some very interesting language on that page which totally supports our position, which is that the new plaintiff's claims were fundamentally different from the claims of the original plaintiffs. And I'll just briefly cite a quote to the court, what I mean.

The original plaintiff was Cape Ann, on the court side.

This is at page 16. "The new plaintiffs' underlying 12B claims differ from Cape Ann in a significant respect. Cape Ann reacquired its stock and proceeded to take an active role in the company's

affairs. In contrast, the new plaintiffs purchased their shares on the open market at a much wider range in time, on the open market, and thereafter were passive investors."

So we have a completely different case than we do here.

Finally, a different, two more points. Defendants argue that plaintiffs abandoned their earlier complaints because they were not included in the consolidated complaints. We cited the Jobs case, which is a non-circuit case, which came down this year, and that case is directly on point. There is no waiver.

And finally, in the Blender dividend case, that involved the reasserting of claims against a defendant that had been dropped, and here the issue has nothing to do with a dropped defendant.

That's all I have to say, your Honor. I think that the claims by both the existing plaintiffs and the new plaintiffs relate back, and the court should deny defendants' request.

MR. ALIOTO: Mario Alioto, your Honor. On the Massachusetts unfair competition claim, the requirement that the demand letter be sent in advance for the claim, we've put the demand letter in the record. It's attached as an appendage to our opposition brief, and I

would draw your Honor's attention to that. It's a very comprehensive demand letter.

We note in our opposition brief that we had served that upon counsel for all eight or nine of the defendant groups. We received, at the time of the brief, as we noted in the brief, we received only one response to that demand letter.

As of this date we have still only received one demand; the eight other groups have just completely ignored it.

I think it's fair to say that the purpose of that demand statute is to give the defendant no advance notice of the litigation, so that they can avoid the litigation. That's what we have attempted to do.

The litigation is not going to be avoided. There are not going to be settlements. The litigation is ongoing, it's off and rolling, and the argument that they simply haven't had enough time to respond, or the statutory timing is off, is just a classic example of using a statute that is designed to protect the defendant, and they are now turning it around and using it as a device to escape liability. So that's what that's all about, your Honor.

JUDGE LEGGE: And this is your letter here.

MR. ALIOTO: That's the letter. There's no

question about any deficiency in that letter. There's no question about any service, on any service on any defendant. As I noted, your Honor, there's only one defendant; the Hitachi group is the only defendant that even responded. No other defendant even responded, and the first indication we had about that, that there was a problem, is when we got a motion to dismiss. And they said they haven't had enough time, or we haven't given them the full 30 days' notice under the Massachusetts statute.

I think that that's --

JUDGE LEGGE: What is this letter? You sent this to whom?

MR. ALIOTO: To counsel for all of the defense, all of the defendants.

JUDGE LEGGE: So this is just an exemplar of an identical letter that you sent?

MR. ALIOTO: Yes. This one went to Morgan, Lewis. There were nine or ten other addresses, and we covered all of the defendant groups. And as I say, there is no problem, there's no challenge to the letter, there's no claim that the letter is deficient or that it doesn't include all of the statutory requirements. The argument is they should have been given more time and it should have been served on them further in advance of

the filing of the complaint.

And the point is that if you look to the purpose of the statute, and the purpose of the statute is to give the defendant advance notice of the claim in order that it might be settled or negotiated and the defendant might avoid the lawsuit. There's no real possibility of that happening. It's just not going to happen. They haven't responded. Nobody has any interest in pursuing this further. So for them to come in and claim that they need more time is just a waste of time, and the claim ought to be allowed to proceed at this point. Thank you.

JUDGE LEGGE: I will give you collectively five minutes. You are giving me a lot.

MR. LAMBRINOS: Demetrius Lambrinos.

Your Honor, I wanted to clarify when I was talking about the Montana statute, I should have made reference to Montana's antitrust law. And the Olson case states that it does not apply. There is no statutory bar in Montana. Thank you.

MR. BALLARD: I'm sorry, your Honor, when you said we're collectively limited to five minutes, did you mean plaintiffs?

JUDGE LEGGE: All of you.

MR. BALLARD: I would like an opportunity --

JUDGE LEGGE: Come on, now. You've given me already a lot that I have here. So just be very short.

MR. BALLARD: Dylan Ballard.

On the standing issue, I'll just take these in the order that plaintiff raised them. I'm not sure what to make of plaintiffs' assertion that they have Article III standing. If they mean that they have standing to bring claims in states where they allege that they do reside but they allege that they did purchase products in those states, that's completely beside the point. You have to have standing to maintain each of the claims in your complaint. If they had brought this as solely an Illinois action, there would be no question that that entire action would lack standing. I'm just puzzled. If that's what plaintiffs say, that they've suffered injury in each of those states, they haven't purchased products in those states. The statute doesn't come into play.

The plaintiffs' counsel made a comment that this is a Rule 23 issue, not a standing issue. Well, every case that any party cites recognizes this is a standing issue. Every case recognizes this is a standing issue. The only issue is when this gets decided.

Turning to the chart -- I just received this

before the hearing, so I haven't had an opportunity to make sure it's accurate, but just on its face, missing from this chart are by far the two most important cases on this issue, and that's Ortiz itself, the Supreme Court case we're relying on --

JUDGE LEGGE: It's a footnote here.

MR. BALLARD: Right, but it's not represented as a case in our favor, which it definitely is. That case recognizes the general rule outside the mandatory global settlement class context, that standing must be addressed immediately.

And the other case they ignore is the Easter case from the Ninth Circuit, which should be at the very top of the left column. It's interpreting the Ortiz case; limiting it to the global settlement class context. And we've quoted from that case -- I won't read it, but it's on page 5 of our reply brief, and it says that expressly, Ortiz is limited to that context.

Another disparity in this chart is that our column is full of Ninth Circuit authority; we've got three Northern District cases here, including Judge Alsup's opinion, in GTU MDL; all of the cases follow the Easter case in saying that standing must be addressed immediately.

Plaintiffs' only other response to my other

argument, that waiting for class certification is pointless, their only response is that they may change their class standing as this motion evolves. They've defined these classes for the purpose, and they have the burden of pleading. It's beside the point. We have to deal with the definitions they're giving us today.

Just briefly, they talked about our claims. The Arkansas consumer protection statute should be dismissed. I did not address that in the Alsup because we acknowledge that there is a split of authority there, and your Honor is going to have to choose sides on that. And the issue concerns what does the term "unconscionable," as used in that statute, amount to. And our cases, the cases on our side of the split, make an attempt to interpret Arkansas case law, including Judge Alsup in the GTU case, and they hold you have to have exploited superior bargaining power. And that does not apply in a price-fixing case. Their cases rely on Black's Law Dictionary for the definition of "unconscionable," and there's no attempt to define the meaning of the state law, which should rely on state statutory interpretation.

In Montana, they say we don't cite any Montana case, which is not true. We cite that where a Montana statute is patterned after federal law, federal law is

persuasive. And Judge Illston in the LCD case took that to heart, and she held that because the Montana is virtually identical to Clayton, precludes plaintiffs from suing under Montana law.

Finally, on unjust enrichment. This is not a burden issue as to whether these state statutes preclude recovery of relief. This is statutory.

They referred your Honor to a footnote where they cited to cases where they say you need Congressional intent to abrogate remedies. We agree with that. The point is that all of these states adhere to this cannon of statutory legislation. It's a way of getting to that final conclusion that there is legislative intent. And we've laid that out state by state, and we have done that over the course of many pages of opening and reply briefs.

And in keeping with your Honor's guidance in mind, I will leave it there and turn it over to Mr. Shapland.

JUDGE LEGGE: You're going to have to be very brief.

MR. SHAPLAND: First point, the plaintiffs still argue that the Montana and Illinois new classes are subject to the new statute. I just want to note it is ironic that they try to avoid stringent statute by

not maintaining plaintiffs to represent these Montana and Illinois statutes. That would eviscerate this. Plaintiffs don't address that or purport how to explain how it wouldn't.

Plaintiffs rely on Figone. First thing I want to note about Figone is, you flip through it and you notice there are no Montana law claims. The second thing I want to note about Figone is that the first and second consolidated amended complaints do not allege nationwide class actions of indirect purchasers. That's what Figone purports to be. The concept of a nationwide class of indirect purchasers was abandoned when the plaintiffs filed their first consolidated amended complaint. It's not repeated in the second consolidated amended complaint. By abandoning those claims, defendants had noticed there was not going to be a nationwide claim against them. They did not have notice of the number and generic identities from these five new states.

Plaintiffs rely on a case called Jobs to reach a different result. Jobs is a 15A pleading case. It simply examines whether or not the plaintiff had the right to amend its case. It was not a relation-back case.

Finally, Figone is a nationwide case, but you

haven't have nationwide purchasers in an antitrust case.

What Figone would have to do in order for this case to proceed against us with the scope of the proposed litigation is that five new classes would have to join this suit, state classes, and Figone would have to identify plaintiffs from those states to join the suit and assert those claims.

Until that time occurs, the plaintiffs are able to enjoy the repose that comes when statutes of limitations pass without that happening. The notice that they currently have is that this case is not proceeding against them with respect to the five state claims.

The final point that I wanted to make is that plaintiffs tend to urge a greater similarity of interest in some of these security cases than actually existed between the securities plaintiffs under the old claims and the new claims in the Young and the Syntex case.

The first point to make about that is, to some extent the plaintiffs overstate the differences between these new and old plaintiffs in the securities cases. The courts in those cases made clear that what they were doing was rejecting application of the same transaction in occurrence test in those cases, and they make clear that when you add new parties you have to show notice,

prejudice, lack of prejudice, and an identity of interest. And I think, too, the plaintiffs overstate the extent to which there is a similarity between the claims of the new classes here and the old classes here. The first point is that the classes arise under the laws of different states, which vary widely, as the Sullivan case points out.

And the second point is the cases arise from different geographic places, and the extent to which they may be paying an overcharge vary.

With that, I rest.

JUDGE LEGGE: All right. Let's take a recess until 10:30, and then we'll start on the discovery and related issues.

(Off the record.)

JUDGE LEGGE: Let's get onto our discovery and related issues.

What I have read are the three letters to me from you folks describing the discovery issues and questions. These are a letter from the plaintiffs of July 15 and two letters from the defendants, July 15 and July 19.

You sent me a thick packet of correspondence reflecting your communications with one another. I've skimmed over that. I don't intent to judge it, because

I, KAREN A. FRIEDMAN, a Certified Shorthand Reporter, hereby certify that the foregoing proceedings were taken in shorthand by me at the time and place therein stated, and that the said proceedings were thereafter reduced to typewriting, by computer, under my direction and supervision.

DATED: September 2, 2010

KAREN A. FRIEDMAN, CSR No. 5425